



Legal Developments

Issue

7

Information for USAID partner organizations operating in Belarus, Moldova and Ukraine, provided by the Legal Office of the Regional USAID Mission for Ukraine, Belarus and Moldova

Highlights – May 2004

- FY04 appropriations act
- Ukraine civil code considerations
- Moldova customs issue

United States

Appropriations. FY2004 appropriations for foreign assistance are included in the omnibus appropriations act that became law on January 23, 2004. Among the appropriations are \$587 million for FREEDOM Support Act countries, but there are no country-level earmarks for Belarus, Moldova or Ukraine. The act includes a very specific requirement – that USAID “develop and implement appropriate standards for access for people with disabilities for construction projects funded by USAID.” President Bush’s proposed FY2005 budget calls for \$550 million under the FREEDOM Support Act.

Taxation of assistance rules. The FY2004 appropriations act contains a revised “prohibition on taxation of assistance” and retroactively revises the FY2003 provision to make it consistent. The Department of States has issued explanatory materials on its site at www.state.gov/m/rm/c10445.htm. USAID contractors and grantees are contractually obligated to report information used in implementing the prohibition.

Millennium Challenge Corporation. The MCC was authorized in the FY2004 act and

received \$1 billion in initial funding. It has a web site – www.mca.gov – where you will read that an initial list of 63 candidate countries was pared down in May to a final sixteen eligible to receive assistance. Armenia and Georgia are the only NIS countries on the final list, although Moldova was among the group of candidates. President Bush has requested \$2.5 billion for the Millennium Challenge Account in FY2005.

Anti-trafficking. The Trafficking Victims Protection Act was reauthorized in December, and USAID will soon be issuing new Acquisition and Assistance Policy Directives (AAPDs) requiring insertion of new provisions into USAID contracts, grants, and amendments. The provisions will permit USAID to terminate the agreement if the contractor or grantee engages in trafficking, procurement of commercial sex acts or forced labor; prohibit the use of USAID funding for activities promoting, supporting or advocating the legalization of prostitution; and restrict the granting of funds to non-US organizations that promote, support, or advocate the legalization of prostitution.

Ukraine

Draft law on technical assistance. The latest version of this draft law (discussed in Issue No. 6) apparently has entered a stage of dormancy under the new Minister of

Economy. USAID has welcomed this development, because the draft law had problems that require careful discussion with donors of foreign assistance.

Notable impacts of the new Civil Code. The Civil Code that went into effect this year makes significant changes to Ukrainian contract law. For example, it is clear that contract notarization should be effected fully. And possible complications in the contract registration process makes it important to fully consider a contract's "moment of conclusion" (i.e., date of effectiveness), particularly if it includes a schedule of payments. On the other hand, the Code creates a more permissive framework for contract termination (with attendant risks) and new requirements and opportunities for lease agreements. Long-term leases also are subject to notarization and registration requirements. Finally, organizations should carefully consider the conflicting rules on denominating the currency of prices and payments.

New Code of Civil Procedure. This Code will go into effect as early as January 1, 2005. Among other things, its provisions deal with the language used in courts, the recording of proceedings, and clarified appeals procedures. The Code also introduces a simplified procedure for civil cases – the "order proceeding". It permits a creditor to obtain a judicial ruling within three days of application regarding debt for which there is a claim. The court's order could permit collection of funds (including unpaid wages) or property in satisfaction of the claim. It is thought that this proceeding will be used by employees against employers who fail to pay wages on time.

Jackson-Vanik to Go? Bills were introduced in the House and Senate of the U.S. Congress on March 11 that would, if enacted, permit

the President to permanently remove Ukraine from application of the Jackson-Vanik Amendment (Title IV of the Trade Act of 1974). Jackson-Vanik effectively denies unconditional normal trade relations to certain countries, including Ukraine, that had (under the Soviet system) non-market economies and that restricted emigration rights.

New MOU. USAID and the Government of Ukraine recently signed an memorandum of understanding on the priorities and directions of the USAID program for the calendar year. "Activities that are consistent with the main directions and aims set forth in [the] Memorandum are deemed to have been agreed to between the two governments as being implemented within the framework" of the 1992 treaty on U.S. assistance.

Belarus

New regulations. The Government of Belarus thus far has refused to accept that its new regulations on foreign assistance (discussed in Issue No. 6) are largely superseded by the 1996 treaty on United States assistance. The Ministry of Foreign Affairs indicated in February that Resolution No. 1522 is applicable to U.S. assistance. The Ministry of Economy and Department of Humanitarian Activities have taken the same position, and in addition, claim that the new decree and edict on "foreign gratuitous assistance" also apply. Although the U.S. Government continues to press its cases, contractors and grantees should carefully consider their operations in light of the Belarusian position. USAID is participating in a UNDP-led effort to develop an objective "manual" describing the effects of the regulations.

Moldova

Partners meeting. At a meeting with USAID partners on April 1 (no fooling), members of the Regional Legal Office and of the Moldova office employees explained recent

developments regarding new guidance on property management, expatriate cards, taxation and other matters. Materials on property management and the cards have been posted on the Regional Mission's web site at www.usaid.kiev.ua/implementers.shtml.

Social taxes. In late March, the new head of the Ministry of Economy's division for coordination of technical assistance reaffirmed the Ministry's agreement that the 1994 treaty on U.S. assistance provides U.S. organizations with an exemption from employer social taxes. USAID is working with the Ministry to obtain the legislative changes necessary to implement this exemption. Please note that amounts budgeted in USAID agreements for social taxes are not fungible with salaries. In other words, the fact that an organization's legal status in Moldova results in *de facto* exemption from employer social taxes, due to the lack of a mechanism to pay those taxes, does not mean that amounts budgeted for those taxes may be paid to employees as an allowable cost.

Customs exemption procedure. The Prime Minister recently signed Decision No. 567, which is specifically addressed to exemptions on imports for technical assistance projects. With one exception, the Decision is helpful. The problem is that customs clearance and exemptions for goods imported through an intermediary is allowed only if it can be shown that the intermediary was selected through a "procurement tender." The Customs Department has already issued instructions implementing this requirement. USAID will be seeking reversal of the requirement.